

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Order Declaring Warm Springs)	WC Docket No. 16-284
Telecommunications Company An)	
Incumbent Local Exchange Carrier for the)	
Warm Springs Reservation in Oregon)	

**COMMENTS OF CENTURYLINK ON WARM SPRINGS TELECOMMUNICATIONS
COMPANY’S PETITION TO BE DECLARED AN INCUMBENT LEC**

CenturyLink hereby files these Comments on the Petition of Warm Springs Telecommunications Company (WST)¹ to be designated an incumbent local exchange carrier (ILEC) in the Warm Springs exchange.²

Given the applicable statutory language and Commission precedent, the ruling sought by WST would require the Commission to issue a Notice of Proposed Rulemaking (NPRM) and then find “by rule” that WST has satisfied the three criteria specified in Section 251(h)(2).³ If the Commission does so, it should, at a minimum, adopt certain conditions to ensure that WST’s treatment as an ILEC in the Warm Springs exchange comports with the public interest.

Specifically, WST should be required to offer service to all customers in the Warm Springs exchange, including those outside the Warm Springs Reservation, and CenturyLink should be provided access to rights-of-way and a central office lease on the Reservation at rates, terms and

¹ Public Notice, DA 16-1057 (rel. Sept. 20, 2016).

² These Comments are filed by, and on behalf of, CenturyLink, Inc. and its regulated wholly-owned ILEC subsidiary in Oregon, Qwest Corporation, d/b/a CenturyLink QC (CenturyLink). CenturyLink takes no position on WST’s request to be treated as an ILEC in the Wanapine exchange, which is a newly created exchange adjacent to CenturyLink’s Warm Springs exchange and is not served by CenturyLink.

³ See 47 U.S.C. § 251(h)(2).

conditions that are just, reasonable, and nondiscriminatory. If the Commission finds that WST is entitled to ILEC classification in the Warm Springs exchange, it should also treat CenturyLink as a non-dominant provider of interstate services in that wire center.⁴

ARGUMENT

On September 19, 2016, CenturyLink filed an Opposition to WST's petition.⁵ In this filing, CenturyLink provides additional comment on WST's petition. As an initial matter, the Commission has previously concluded that petitions such as that filed by WST must be addressed through rulemaking, given the language of Section 251(h)(2).⁶ Thus, further consideration of WST's petition would require the Commission to issue an NPRM and then consider the petition in a subsequent order.

In that rulemaking proceeding, the Commission should address the concerns raised in CenturyLink's Opposition, to ensure that WST meets each of the Section 251(h)(2) criteria, including the requirement that the ILEC classification sought by WST will be consistent with the public interest, convenience, and necessity and the purposes of Section 251.⁷ At a minimum, the

⁴ CenturyLink is also prepared to file a petition for forbearance from the requirements of Sections 251(c), 252 and 271(c) in the Warm Springs exchange if the Commission intends to move forward on WST's petition.

⁵ Opposition of CenturyLink to Petition of the Warm Springs Telecommunications Company, WC Docket No. 16-284 (Sept. 19, 2016) (CenturyLink Opposition).

⁶ See *In the Matter of Petition of South Slope Cooperative Telephone Company, Inc. For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act Declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon*, Notice of Proposed Rulemaking, WC Docket No. 04-347, 23 FCC Rcd 15046 (2008), *In the Matter of Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, 21 FCC Rcd 11506, 11509 n.12 ("The Commission initiated a rulemaking proceeding because section 251(h)(2) refers to Commission action 'by rule' to treat a LEC as an incumbent LEC for purposes of section 251.") (*Mid-Rivers ILEC Classification Order*).

⁷ 47 U.S.C. § 251(h)(2)(C).

Commission should condition the treatment of WST as an ILEC in the Warm Springs exchange on the following requirements.

- (1) *WST should be required to offer service to all customers in the Warm Springs exchange, including those outside the Warm Springs Reservation.*

While WST's petition focuses on customer locations on the Reservation, the Warm Springs exchange includes a small number of customer locations *outside* of the Reservation, as WST acknowledges. WST also acknowledges that it would be costly for CenturyLink to serve those customers if it were not serving customers on the Reservation. In response to a question from the Oregon Public Utility Commission, WST therefore agreed to offer service to these off-Reservation customers.⁸ There is also a question whether WST has sufficient facilities to serve all existing locations on the Reservation currently receiving service.⁹ Given these concerns, any reclassification of WST as an ILEC in the Warm Springs exchange should be conditioned on WST offering service to all customers in that wire center, including those outside the Reservation. CenturyLink understands that WST is an eligible telecommunications carrier in the Warm Springs exchange, so it already has an obligation to serve all customers in the exchange, including those not residing on the Reservation, so this requirement should not be unduly burdensome.

- (2) *CenturyLink should be provided access to rights-of-way and a central office lease on the Reservation at rates, terms and conditions that are just, reasonable, and nondiscriminatory.*

If WST is going to operate as an ILEC, and particularly a Tribal-owned ILEC, on the Reservation, it is imperative that other, nonaffiliated telecommunications carriers obtain just, reasonable, and nondiscriminatory access to rights-of-way and a central office lease on the

⁸ Petition of the Warm Springs Telecommunications Company, Attachment 1.

⁹ CenturyLink Opposition at 4.

Reservation. Since at least the late 1980s, CenturyLink has leased access to rights-of-way on the Reservation, which is located in north-central Oregon, to run a fiber optic cable that provides state and federally mandated services to large portions of eastern Oregon. The governing rights-of-way agreement expired in 2013. The lease for CenturyLink's central office on the Reservation also needs to be renegotiated. Over the past four years CenturyLink has repeatedly inquired about negotiating new agreements for CenturyLink's fiber optic cable and central office. Those negotiations are yet to begin.

In light of this delay and the Confederated Tribe's ownership of WST, CenturyLink is concerned about continuing to get access to rights-of-way and a central office lease on the Reservation at rates and terms that are just and reasonable and also nondiscriminatory, relative to the access enjoyed by WST. Given that the Reservation spans 1,000 square miles, it would be inefficient and costly for CenturyLink to route its fiber cable around the Reservation to provide these critical services.

Given these considerations, the Commission should condition the reclassification of WST in the Warm Springs exchange on CenturyLink (and other telecommunications providers) being provided access to rights-of-way and a central office lease on the Reservation at rates, terms and conditions that are just, reasonable, and nondiscriminatory.

In addition to these conditions, a Commission decision to reclassify WST as an incumbent in the Warm Springs exchange should be accompanied by a ruling that CenturyLink is a non-dominant provider of interstate services in that wire center, similar to the Commission's treatment of Qwest Corporation in the *Mid-Rivers ILEC Classification* proceeding.¹⁰ An evaluation of the four factors cited in that order (market share, supply elasticity, demand

¹⁰ See *id.* at 11519-21 ¶¶ 29-34.

elasticity, and cost structure, size and resources) all support a finding that CenturyLink lacks market power in the Warm Springs exchange. And if the Commission finds that WST has “substantially replaced” CenturyLink as an incumbent in that exchange, there is no basis to continue to regulate CenturyLink as a dominant provider.

CONCLUSION

In its Opposition and these Comments, CenturyLink has raised a number of concerns that the Commission should address before moving forward on WST’s petition. Before granting WST this relief, applicable precedent also requires the Commission to issue an NPRM and then find “by rule” that WST has met each of the criteria in Section 251(h)(2). Given the concerns noted by CenturyLink, the Commission should condition any reclassification of WST as an ILEC on the conditions noted above. The Commission should also treat CenturyLink as a non-dominant provider of interstate services in the Warm Springs exchange.

Respectfully submitted,

CENTURYLINK

By: /s/ Craig J. Brown
Craig J. Brown
Tiffany West Smink
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-2503
Craig.J.Brown@CenturyLink.com

Its Attorneys

Jeffrey S. Lanning
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
202-429-3113
Jeffrey.S.Lanning@CenturyLink.com

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